**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 163 OF 2006**

M/s.Rayalaseema Concrete
Sleepers Pvt.Ltd.,
Navelim, Goa. ... Petitioner

V/s.

The Assistant Commissioner of
Sales Tax and others. ... Respondents.

A.N.S.Nadkarni i/b. H.D.Naik
for the petitioner.

S.S.Kantak, Advocate General with
Ms.R.Chodankar, GA for respondent Nos.1 and 2.

**CORAM : V.C.DAGA, J.**

**DATED : 9th August 2006.**

**P.C. :**

Leave to delete respondent No.3 from the array of parties. Amendment to be carried out forthwith.

2. Rule, returnable forthwith.

Ms.Chodankar waives service for respondent Nos.1 and 2.

Respondent No.4 is a formal party. Service on respondent No.4 is not necessary for adjudication of this petition.

By consent of parties petition is taken up for hearing.

3. This petition is directed against the judgment and order dated 18th March, 2005 passed by the Administrative Tribunal, Goa ("Tribunal" for short) rejecting the misc.application as well as appeal filed by the petitioner for the reasons recorded in the order.

4. One of the reasons sought to be recorded for rejection of the appeal is that no security was offered as required under section 27(2A) of the Goa Sales Tax Act, 1964 ("Act" for short). While considering the case on merits, the Tribunal has reached to the conclusion that the appellant/ petitioner herein failed to produce certificate from the Directorate of Industries, Government of Goa that the said industry is not of highly polluting nature. The second ground on which the appeal of the petitioner was dismissed appears to be that exemption under Entry No.68 of Schedule-II is not available to

the petitioner. It appears that when this appeal was heard, attention of the Tribunal was not invited to the non-polluting certificate issued by the Directorate of Industries. It, however, appears that no application for exemption of pre-deposit was filed since the petitioner bonafidely believed that in view of application for stay it was not necessary.

5. The learned Advocate General appearing for respondent Nos.1 and 2 opposed this petition and tried to support the impugned order.

6. Having heard rival parties, it appears that attention of the Tribunal was not drawn to the existence of non-polluting certificate issued by the Director of Industries. So far as absence of security or pre-deposit is concerned, the Tribunal should have rejected the appeal at the threshold. It was not necessary for the Tribunal to dwell upon merits of the matter, if the appeal did not comply with the provisions of section 27(2A) of the Act. The appeal should have been rejected by the Tribunal for want of compliance of section 27(2A) of the Act.

7. Assuming that the Tribunal was justified in hearing the matter on merits, in that event, it was necessary for the tribunal to place this appeal for hearing so as to give an opportunity to the assessee

to file all relevant documents on record. It appears that at the stage of consideration of stay application, appeal itself came to be disposed of finally. With the result, the appellant/ assessee did not get opportunity to file relevant documents in record.

8. Having heard rival parties, the impugned order needs to be set aside since there was no opportunity to the petitioner to place all documents on record of the appeal for want of notice of final hearing of the appeal by the Tribunal. However, looking to the consensus between the parties, the petitioner/ appellant is directed to deposit Rs.10 lakh (rupees ten lakh only) with the Tribunal by way of security as required under section 27(2B) of the Act within eight weeks from today. In the event of such deposit, it would be open for the tribunal to rehear and dispose of the appeal expeditiously on its own merits. All rival contentions are kept open.

9. Petition stands disposed of in terms of this order with no order as to costs.

(V.C. DAGA, J.)

skn/-